IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13348 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MEHBOOB YUSUFBHAI AJMERI
Versus
COLLECTOR AND ADDL.SUPTD. OF STAMPS

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Appearance :
Ms Shahim Qureshi for Mr Pritesh L Parikh for the petitioner
Ms Kiran Pandey, Assistant Government Pleader for the respondent

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 16/04/2007

ORAL JUDGMENT:

The petitioner has approached this Court under Article 226 of the Constitution of India for appropriate writ for quashing and setting aside

the impugned judgment and order dated 31st March 2004. By the said order the respondent-authority has cancelled the licence of the petitioner for sale of non-postal stamps. It is the say of the petitioner that he was issued two licences namely S.B. 324/96 and S.B. 325/96. It is his say that he is a handicapped person and his disability is to the extent of 80%. He is maintaining his family from the income of sale of non-judicial stamps.

He has made averments that by order dated 31st March 2004 the respondent has not renewed his licences on the grounds mentioned in the said order. He has, therefore, prayed that the said order be quashed and set aside and the respondent be directed to grant him licence for sale of non-judicial stamps.

Respondent has resisted the writ petition by filing affidavit-in-reply. It is the say of the respondent that on scrutiny it was learnt that number of stamp vendors were not reaching the expected mark of sale and their commission was less than Rs.1,000/- per month. It was also learnt that such persons were indulging into malpractices. Therefore, the authority decided not to renew the licence of such stamp vendors. Later on, it was found that large number of stamp vendors were having less sale and the resultant commission was less than Rs.1,000/-. Therefore, limit of Rs.1,000/- was reduced to Rs.300 per month. It is the say of the respondents that since the petitioner's commission was less than Rs.400 per month his licence was not renewed.

I have heard Ms Shahim Qureshi for Mr Pritesh Parikh, learned advocate for the petitioner. She has submitted that the petitioner was not heard before passing the impugned order by the respondent. She has also submitted that the petitioner had been holding the licence since August 1996 and he had never committed any default. Therefore, the impugned order is passed by the respondent arbitrarily and without any

justification. According to her, the petitioner is a handicapped person and he does not have any other means of livelihood and therefore on humanitarian ground also he is required to be granted renewal of the licence. She has submitted that no scrutiny as required by Clause (2) of Circular dated 17.1.2004 to ascertain why the petitioner's commission was less than Rs.1,000 has been made and therefore also the impugned order is not in consonance with the provisions of the Circular of the respondent. She has placed reliance on the decision of this Court rendered in the case of Kirtikumar Indravadan Shah v. State of Gujarat, 2006 (3) GLH 313, decision of the Division Bench of this Court in Letters Patent Appeal No.1024 of 2006 in the case of Collector and Additional Superintendent of Stamps v. Abdul Khalik Gulam Mohd. Sumara, and also on the oral order dated 29.09.2005 passed by the learned Single Judge in the case of Bhikhabhai Somabhai Patel v. Prant Officer, Mehsana rendered in Special Civil Application No.8848 of 2004.

Having carefully considered the rival submissions and having perused the record of this petition, it appears that this petition can be disposed of on two counts, firstly, on the ground of violation of principles of natural justice and secondly, on the ground of non-application of mind.

It is the say of the petitioner that before passing the impugned order he was not heard. In the impugned order it is stated that the show-cause notice dated 12.01.2003 had been issued to the petitioner. However, no copy of the said show-cause notice is produced on record. The petitioner's say is that he has never received any notice of hearing. The order is on a printed form. It does not state when the notice was received by the petitioner. In view of the same, it is easy to presume that the petitioner was not served with any notice nor was he granted any personal hearing by the concerned authority. Obviously, there

appears to be violation of principles of natural justice. When the authority is discontinuing the longstanding licence running in the name of the petitioner, it is just and expedient that he or his representative should have been heard before passing the impugned order, which does not seem to have been done in the present case. Therefore, on that count the order is required to be quashed and set aside.

Moreover, in the order as many as four grounds have been stated for discontinuation of the licence. It is not stated precisely on what ground the respondent had thought it fit to refuse renewal of the licence. Further, in the operative portion it is stated by the respondent that the licences were being cancelled with effect from 31st March 2004. This is a case of renewal of licences and not cancellation of the licences. In view of the same, the order clearly appears to have been passed without application of mind by the respondent. On these two counts alone the impugned order is required to be set aside. Hence, there is no need to consider the other submissions made by the learned counsel for the petitioner.

In the result, the impugned order dated 31st March 2004 is quashed and set aside. The respondent is directed to issue proper show-cause notice and give effective hearing to the petitioner and then take appropriate decision in the case. Accordingly, the petition is allowed. Rule is made absolute with no order as to costs.

(Akshay H Mehta, J.)

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